

Frankfurt Kurnit Klein + Selz ^{PC}

Edward H. Rosenthal

488 Madison Avenue, New York, New York 10022

T (212) 826 5524 F (347) 438 2114

erosenthal@fkks.com

November 21, 2014

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/2/14

VIA ECF

Hon. Thomas P. Griesa, U.S.D.J.
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 26B
New York, NY 10007-1312

Re: Palmer/Kane LLC v. Scholastic Corporation et al., No. 14 Civ. 7805 (TPG)

Dear Judge Griesa:

We represent Defendants Scholastic Corporation and Scholastic Inc. ("Scholastic") in the above-referenced matter. We write regarding Defendants' pending motion to dismiss Plaintiff's Complaint, dated on November 4, 2014 ("Defendants' Motion") (Dkt. No. 11) and Plaintiff's Opposition, dated November 14, 2014 ("Plaintiff's Opposition") (Dkt. 13). We file this letter pursuant to Your Honor's Individual Practices, paragraph 1A, in lieu of a Reply.

Defendants' Motion seeks to dismiss Plaintiff's Complaint (Dkt. 1) under the doctrine of *res judicata* on the grounds that it asserts the very same claims that were previously dismissed by this Court in the prior related case, *Palmer/Kane LLC v. Scholastic Corp. and Corbis Corp.*, No. 12 Civ. 3890 (TPG) ("Palmer Kane I"). In response, Plaintiff's Opposition agrees to limit the Complaint to claims that accrued after this Court's March 31, 2014 Order in the Palmer Kane I case (Pl.'s Opp. at 1, 4, 6, 8, and 9). The Opposition further requests leave to amend its Complaint in the form of Appendix A to Plaintiff's Opposition (Pl.'s Opp. at 9).

~~Although Plaintiff's legal analysis of the issues of *res judicata* and claim preclusion are flawed in many respects,~~ Defendants do not oppose Plaintiff's request for leave to file an Amended Complaint limiting its claims to those alleged to have accrued after March 31, 2014. Accordingly, Defendants agree to withdraw their pending Motion provided that Plaintiff's claims are limited as set forth in its proposed Amended Complaint.

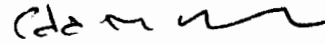
Approved:
Thomas P. Griesa
USDC

12/2/14

Hon. Thomas P. Griesa, U.S.D.J.
November 21, 2014
Page 2

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ed Rosenthal", with a stylized flourish at the end.

Edward H. Rosenthal

cc: All Counsel (via ECF)